

Application No.: 10/645,235

Docket No.: SPINE 3.0-298 DIV I

**IN THE DRAWINGS**

Please replace drawing sheet 3/8 (which includes FIGS. 3 and 4) with the enclosed replacement drawing sheet.

Attachment: 1 Replacement Sheet

**REMARKS**

This Amendment is in response to the Official Action mailed on June 23, 2009, with the enclosed petition for a one-month extension of time resetting the deadline for response up to and including October 23, 2009.

Claims 1, 3, 14, 15, 17-20, 23-24, 26, 34, and 35 have been amended. New claim 49 has been added. As these claims have been amended to incorporate limitations from dependent claims, correct dependency, and/or correct informalities in the claim language, the amended claims and new claim are supported by the originally filed application and add no new matter. Claims 2, 11, 27-33, 36-40, and 42 have been canceled by the present amendment; claims 4, 8-10, 12-13, and 41 were previously canceled. Accordingly, claims 1, 3, 5-7, 14-26, 34, 35, and 43-49 are currently pending in the application for review by the Examiner in light of the within remarks.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited in view of the within remarks.

**I. INTERVIEW SUMMARY**

Applicants would like to thank Examiner Swiger for extending the courtesy of a telephonic interview on October 7, 2009 with Applicants' attorney, April M. Capati, Esq. During the interview, Ms. Capati and Examiner Swiger discussed the claim limitation "first and second members pivoting about the same axis of rotation," with respect to U.S. Patent No. 5,749,876 to Duvillier ("Duvillier"), as well as U.S. Patent No. 5,888,219 to Bonutti. Examiner Swiger suggested adding more limitations to distinguish the two references. Ms. Capati indicated that she would further review the references and consider proposing claim limitations.

**II. DRAWINGS**

The drawings have been objected to as failing to comply with 37 CFR § 1.84(p)(4) because reference character 42 has been used to designate both a cam and a cutting guide. As shown in the marked-up drawings, one of the reference numerals in FIG. 3 has been amended to indicate "14b," a cutting guide insert. Accordingly, it is respectfully submitted that the objections are overcome.

**III. SPECIFICATION**

The specification has been amended, as follows:

- Paragraph [0001] now recites that the application is a divisional of "U.S. Patent No. 6,648,894."
- Paragraph [0036] now recites that the cutting guide insert of Figure 7B is reference numeral "14b".
- Paragraph [0039] now recites that the cutting guide insert is identified as reference numeral "14b."

Based on the foregoing amendments to the specification, Applicants respectfully submit that the objections to the specification are now overcome.

**IV. CLAIM REJECTIONS - 35 U.S.C. § 112**

Claim 42 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim subject matter which Applicants regard as the invention. Claim 42 has been canceled from the present application. Accordingly, Applicants respectfully submit that the rejection of claim 42 is moot.

**V. CLAIM REJECTIONS - 35 U.S.C. § 103**

Claims 1, 6-7, 11, 14-29, 36-40, 42, 44-45 and 47 are rejected under 37 U.S.C. § 103a as being unpatentable under *Duvillier*. Applicants respectfully submit that the claim amendments set forth herein render the rejections moot.

Claim 1 has been amended to incorporate the limitations of claim 2, which has been indicated as allowable. Claims 11, 27-29, 36-40 and 42 have been canceled. Claims 6-7 and 44-45 depend from claim 5 (indicated by the Examiner as being allowable), and 14-26, and 47 now depend from amended base claim 1.

Based on the foregoing amendments, Applicants respectfully submit that the rejections based upon *Duvillier* are now moot. Accordingly, Applicants respectfully request reconsideration and allowance of the remaining claims.

**VI. ALLOWABLE SUBJECT MATTER**

The Examiner has indicated that claims 5-7, 43-46, and 48 are allowed. Furthermore, claims 2, 3, and 30-35, which are dependant upon a rejected base claim, have been identified as being allowable if rewritten in independent form to include all of the limitations of the base claims and any intervening claims.

As indicated above, claim 1 has been amended to incorporate the limitations of base claim 2. New claim 49 has been drafted, which is former claim 33 rewritten in independent form. Claims 34-35 have been amended to depend from new claim 49. Claims 2, 11, 27-33 and 36-40, and 42 have been canceled. Finally, the remaining claims now depend from claims identified as being allowable. Accordingly, it is respectfully submitted that all of the claims are in condition for allowance.

**VII. CONCLUSION**

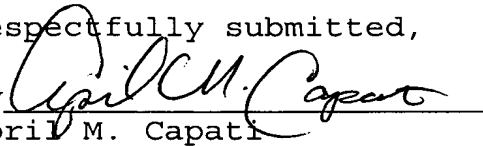
If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 23, 2009

Respectfully submitted,

By



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